

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 383 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

AGARSINH CHAMNSINH

Appearance:

Mr.M.A.Bukhari, Addl.P.P. for the appellant

Mr. H.N.Jhala, Advocate for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/10/96

ORAL JUDGEMENT

By way of this appeal, the State of Gujarat has challenged the judgment and order of acquittal passed by by the learned Judicial Magistrate, First Class, Tharad in Criminal Case No. 247 of 1986 acquitting the respondents herein for the offences punishable under sections 323, 324, 504 read with section 114 of the Indian Penal Code.

Devram Vira, (PW 1, Ex.8) , who is the complainant, in his complaint has alleged that on 6-1-86 at about 20.30 hours, all the accused came with weapons like Dharia and pipes and started quarrel with his son Harsanga for not allowing their cattle to graze. According to the complainant, accused No.2 inflicted pipe blow on the hand while accused No.1 inflicted injury with pipe on the leg of Harsanga while accused No.4 caused a Dharia injury on the forehead of Harsanga. The complainant and his son Prema when tried to save Harsanga, accused No.3 gave a pipe blow on the back of Prema. The complainant also sustained an injury with Dharia. During the scuffle, when the complainant and his son beg for mercy, the accused while leaving the spot gave a threat that in future they will not spare them. Thereafter the injured Harsanga was given medical treatment on the same night. PSI Tharad on the basis of the complaint started investigation and recorded the statements of the witnesses and after completion of the investigation submitted a chargesheet before the learned Magistrate. The learned Magistrate, after appreciating the evidence on reocrd, as stated above, acquitted the accused mainly on the ground that the prosecution has not examined the independent witnesses and no reliance can be placed on the evidence of the complainant and his son who, according to the learned Magistrate, are interested witnesses.

In my view, the approach of the learned Magistrate is not proper in appreciating the evidence of the witnesses. It is not necessary and there is no such law that the Court should always discard the evidence of interested witnesses. The evidence of the interested witnesses is required to be closely scrutinised by the Court with a view to see that the accused are not falsely implicated by the witnesses. When there is a private dispute and the witnesses are injured, there is bound to be the evidence of injured witnesses and may be the relatives too, but merely because they are relatives or are interested, their evidence cannot be brushed aside , especially when their evidence is corroborated by the other evidence. Reading the evidence of the complainant Devram Vira (PW 1, Ex.8), injured Harsanga (PW 2, Ex.22), Prema Devram (PW 3, Ex.23) and Nanji Devram (PW 4, Ex.26), it is clear that they have narrated the incident in a most natural manner. they had clearly identified the accused and their presence cannot be doubted in view of the injuries sustained by injured Harsanga, Devram and Prema Devram. Dr. Prakash Sagar (PW 5, Ex.28), who examined Harsanga Devram on 7-1-86 ,noticed as many as 10 injuries on the person of Harsanga. According to the

doctor, the injuries were possible with the weapons used by the accused. In this view of the matter, it is clear that the evidence of the prosecution witnesses regarding the injuries is clearly corroborated by the medical evidence and, therefore, the reasoning of the learned Magistrate that no other independent witnesses were examined cannot and should not come in the way of the prosecution to establish the charge against the accused. In view of this, the order of acquittal passed by the learned Magistrate is not sustainable and this appeal is required to be allowed.

Mr. H.N.Jhala, learned Advocate, appearing for the accused, at this stage submitted that the offences in question took place on 6-1-86 and it would be too harsh to send them to Jail after about a period of almost ten years and ten months. Instead, he submitted, they may be sentenced to pay fine. Having given anxious thought to the submission of Mr. Jhala, I am of the opinion that the ends of justice would be met with if each of the accused is ordered to pay a fine and the same is paid to the injured Harsanga Devram and Prema Devram by way of compensation.

In the result, this appeal is allowed. All the the respondent-accused are convicted for the offences punishable under sections 323, 324, 504 read with section 114 of the Indian Penal Code and each of them is ordered to pay a fine of Rs.1000/-, in default to suffer R.I. for three months. The amount of fine, if paid, shall be distributed amongst the two injured Harsanga Devram and Prema Devram in the proportion of 3:1. The respondents shall pay the amount of fine to the trial Court within fifteen days from the date of receipt of the writ of this Court and the trial court shall distribute the same as stated above, on the said amount being deposited by the respondent-accused.

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